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5 Attorneys for Plaintiff Donald Norman  
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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **OAKLAND DIVISION**

10 DONALD NORMAN, in the Right of } Case No. 4:16-cv-03587-YGR  
11 and for the Benefit of Intersango, LLC. }  
12 Plaintiff, } **PLAINTIFF'S NOTICE OF NON-**  
13 } **OPPOSITION TO DEFENDANT**  
14 v. } **PATRICK STRATEMAN'S MOTION**  
15 PATRICK STRATEMAN, AMIR } **TO DISMISS**  
16 TAAKI, JAMIE STRATEMAN, }  
17 Defendants, } Date: October 11, 2016  
18 and } Time: 2:00 p.m.  
19 INTERSANGO LIMITED LIABILITY } Judge: Hon. Yvonne Gonzalez Rogers  
20 CORPORATION and INTERSANGO, } Courtroom 1 - 4<sup>th</sup> Floor  
21 LLC }  
22 Nominal Defendants. }

23  
24 **PLAINTIFF'S NOTICE OF NON-OPPOSITION TO DEFENDANT**  
25 **PATRICK STRATEMAN'S MOTION TO DISMISS (CASE NO. 4:16-cv-**  
**03587-YGR)**

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2  
3 NOTICE IS HEREBY GIVEN by and through Plaintiff Donald Norman's  
4 ("Plaintiff") counsel of record, that Plaintiff does not oppose Defendant Norman  
5 Strateman's (Strateman) Motion to Dismiss pursuant to Federal Rule of Civil  
6 Procedure 12(b)(1).

7 Strateman moves to dismiss this action, in part, for lack of subject matter  
8 jurisdiction based on Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the  
9 ground that there is no diversity jurisdiction pursuant to 28 U.S.C § 1332(a)(2).  
10 Plaintiff does not oppose the dismissal of the action pursuant to FRCP 12(b)(1).  
11 However, the Ninth Circuit has held that if a district court dismisses an action for  
12 lack of subject matter jurisdiction, the dismissal must be made without prejudice  
13 and with leave to amend. *See Kelly v. Fleetwood Enterprises, Inc.* 377 F.3d 1034,  
14 1036 (9<sup>th</sup> Cir. 2004) (stating that the district court should have dismissed the action  
15 without prejudice because it lacked subject matter jurisdiction).

16 Accordingly, Plaintiff does not oppose the dismissal of this action based  
17 solely on these grounds, but requests that the dismissal is made without prejudice  
18 and with leave to amend. Plaintiff, in order to seek justice for his wrongs, intends  
19 to either, in compliance 15(a)(1)(B), file an amended complaint including a federal  
20 question claim, thus satisfying subject matter jurisdiction pursuant to FRCP  
21 12(b)(1); or file a related Complaint in California State Court Jurisdiction of San  
22 Francisco. Counsel for Plaintiff will seek to meet and confer regarding  
23 jurisdictional and ADR options prior to either action.

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**03587-YGR)**

Respectfully Submitted,

DATED: September 15, 2016

## LAW OFFICES OF NATE KELLY

By: Nathaniel Kelly  
Nathaniel G. Kelly

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## Attorneys for Plaintiffs

**PLAINTIFF'S NOTICE OF NON-OPOSITION TO DEFENDANT  
PATRICK STRATEMAN'S MOTION TO DISMISS (CASE NO. 4:16-cv-  
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